

INITIAL STATEMENT OF REASONS
Enterprise Zones

Title 25, California Code of Regulations
Chapter 7
Subchapter 21

Proposed Amendment of
Section 8431. Definitions

Proposed Adoption a new Article 14.
Enterprise Zone Administration and Issuance of Vouchers.
Sections 8450, 8450.1, 8450.2, 8450.3, 8450.4, 8450.5, 8450.6, and 8450.7

INTRODUCTION

This Initial Statement of Reasons (ISOR) has been prepared by the California Department of Housing and Community Development (hereinafter “the Department”) to describe proposed regulations for the interpretation and implementation of changes to the State’s Enterprise Zone program resulting from the passage of Section 1 of Chapter 593, Statutes of 2003 (S.B. 305, hereinafter referred to as “Chapter 593”), and Sections 14, 15, 66 and 67 of Chapter 225, Statutes of 2004 (SB 1097, hereinafter referred to as “Chapter 225”). (These changes amend Government Code Sections 7072, 7076 and 7086, and Revenue and Taxation Code Sections 17053.74 and 23622.7)

The purpose of the Enterprise Zone program is to stimulate business and industrial growth in depressed areas of the state by relaxing regulatory controls that impede private investment. It is in the economic interest of the state to have one strong, combined, and business-friendly incentive program to help attract business and industry to the state, to help retain and expand existing state business and industry, and to create increased job opportunities for all Californians. Areas designated as enterprise zones derive a variety of governmental benefits including the granting of tax credits to businesses located in an enterprise zone for hiring qualified persons.

BACKGROUND

Program Administration and Adoption of Regulations. Historically, the Enterprise Zone program was administered by the Technology, Trade, and Commerce Agency (“TTCA”). TTCA was authorized to adopt regulations into California Code of Regulations Title 10, and the specific Enterprise Zone Program regulations were adopted into Title 10, Chapter 7.8 commencing with Section 5600. Effective January 1, 2004, Chapter 593 transferred responsibility for administration of the Enterprise Zone to the Department of Housing and Community Development (the “Department”). The Department adopts its non-building standard regulations into Title 25 of the California Code of Regulations. Concurrently with, or prior to, this regulatory undertaking, the Department will be filing what is called a “Section 100 filing” (a

filing without any regulatory effect) with the Office of Administrative Law moving all of the TTCA Enterprise Zone regulations from Title 10 into Title 25, Chapter 7, Subchapter 21. For this reason, these proposed regulations, dealing with the issuance of tax credit vouchers to businesses, are being placed in a new Article 14. The articles between Article 1. and Article 14. will be composed of the regulations being moved from Title 10..

Statutory Framework. There are two sets of statutes that impinge upon the granting of employment tax credits. Application, selection, designation and monitoring of enterprise zones is governed by Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1, Government Code (known as the “Enterprise Zone Act”). The procedure to be followed by taxpayers wishing to claim a hiring tax credit for jobs located in an enterprise zone is governed by Revenue and Taxation Code Sections 17053.74 and 23622.7.¹

In brief, in order to claim a tax credit, an employer must obtain a “certification” or “voucher” from one of the agencies designated in statute certifying that the employer has hired a “qualified employee” for a job located in an enterprise zone; and taxpayers are directed to retain these certifications in the event of an audit by the Franchise Tax Board. Initially, the agency most often issuing a certification was the State Employment Development Department (“EDD”). However, over time, EDD stopped issuing certifications (popularly known as “vouchers”)² and an ad hoc process evolved whereby vouchers are now issued by local government enterprise zone managers and these vouchers are accepted by the Franchise Tax Board (“FTB”).

Although TTCA did adopt regulations governing the designation of enterprise zones (see California Code of Regulations Title 10, Chapter 7.8, commencing with Section 5600), it did not adopt regulations governing the process of issuing vouchers or regularizing the ad hoc process of vouchers issued by local enterprise zone managers.

CHAPTER 225 CHANGES

Chapter 225 made the following changes in the Enterprise Zone program statutes that are the subject of this rulemaking:

- Codified the ad hoc process by permitting vouchers to be issued by “the local government administering the enterprise zone” (Ch. 225, Secs. 66 and 67 amending Rev. & Tax C. §§17053.74(c)(1), 23622.7(c)(1));
- Authorized the Department to adopt regulations governing the issuance of vouchers by local governments (Ch. 225, Secs. 66 and 67 amending Rev. & Tax C. §§17053.74(c)(1), 23622.7(c)(1));

¹ Rev. & Tax. C. Secs. 17000 et seq. deal with personal income tax; Rev. & Tax. C. Secs. 23000 et seq. deal with bank and corporation taxation. Sections 17053.74 and 23622.7 essentially are identical but apply to different groups of taxpayers.

² See EDD Electronic Field Office Directive 97-22 issued April 9, 1997 instructing EDD field offices to no longer perform eligibility determinations, request documentation or sign vouchers. Zone managers took over this process sometime in the summer of 1997.

GENERAL PURPOSES OF PROPOSED REGULATIONS

The primary purpose of this rulemaking is to respond to the Legislature's direction to promulgate regulations governing the issuance of vouchers by local enterprise zones. Article 14 – Enterprise Zone Administration and Issuance of Vouchers – addresses the following topics:

- Designation of a zone manager and staffing
- Standards for a local vouchersing program
- Actual content to be included in a voucher
- Required documentation for issuance of a voucher
- Alternate method of establishing eligibility if documentation is unavailable
- Appeals to the Department

DISCUSSION OF SPECIFIC SECTIONS

§8431. Definitions. It is customary and useful to the reader to begin a body of regulations with definitions of key terms used throughout the body of regulations. The definitions in this section as closely as possible mirror the way the terms are used in statute.

“Certificate or Voucher” Both the term “certificate” and the term “voucher” are used in Enterprise Zone Act. However, in the Department's experience, zone managers and consultants for businesses generally use the term “voucher.” Therefore, the Department proposes to adopt the popular term “voucher” as well as “certificate.” Also, one of the on-going concerns of consultants to businesses is the lack of uniformity among zones in their administration of a vouchersing program. In order to create uniformity and consistency statewide, Section 8450.3 prescribes the content of a voucher and Section 8450.4 describes the information that must be submitted to support issuance of the voucher. In order to bring consistency and uniformity to the actual form of the voucher, this definition alerts the public that the Department will provide the format for vouchers. Consistency of information and format will assist both the Department and the Franchise Tax Board in their review of local vouchersing programs. It also will provide consistency among zones which will assist businesses and their consultants where the business is located in more than one zone.

“Enterprise Zone Manager” The statutory scheme defines “enterprise zone” as a geographic area (Gov. Code Sec. 7072(d); and refers to the “governing body” of the enterprise zone (Gov. Code Sec. 7072(e)). However, in actual practice, each governing body has designated some entity within the local jurisdiction to administer the program (e.g., an economic or community development department). This definition is being added to distinguish between the governing body of an enterprise zone and the entity that actually administers the business of the zone.

“Memorandum of Understanding” Government Code Section 7076.1 subdivisions (a) and (b) refer to a memorandum of understanding between the Department and the zone. This term is used several places in these regulations and a definition is being added for clarity.

The subsection lettering for “Qualified Employee” and “Remittance Form” have been amended to accommodate the addition of the definitions for “Enterprise Zone Manager” and “Memorandum of Understanding.”

“Qualified Employee” – The definition of this term is being amended to acknowledge that, in order to be a “qualified employee,” the new documentary requirements of proposed Sections 8250.5 or 8250.6 must be met.

Article 14. Enterprise Zone Administration and Issuance of Vouchers

Subdivision (c)(1) of Revenue and Taxation Code Sections 17053.74 and 23622.7 state that, as part of obtaining a hiring tax credit, a taxpayer shall obtain “a certification that a qualified employee meets the eligibility requirements” specified subdivision (b)(4)(A)(iv). Subdivision (c)(1) further states: “The Department of Housing and Community Development shall develop regulations governing the issuance of certificates by local governments pursuant to subdivision (a) of Section 7086 of the Government Code.” Government Code Section 7086(d) states that the Department shall adopt regulations governing the issuance of certificates by local governments pursuant to subdivision (c) of Revenue and Taxation Code Sections 17053.74 and 23622.7.

The general purposes of this rulemaking are:

- To establish a uniform, statewide system for qualifying employees, issuing vouchers, and providing appropriate documentation for businesses to receive hiring tax credits.
- To create and maintain a required level of scrutiny to document that an employee is “qualified” thereby entitling the employer for a hiring tax credit pursuant to Revenue and Taxation Code Section 17053.74 or 23622.7.
- To ensure independent, systematic, consistent and recorded verification that the documentation submitted in support of an application for a hiring tax credit vouchers substantiates that the employee is a “qualified employee.”

§8450.0. Definitions.

As the Department developed the vouchering regulations, it became clear that a separate definition section would be necessary for the unique terms used in Article 14. Also, all of the language describing the various categories of “qualified employee” for purposes of receiving a hiring tax credit are contained in subdivision (b)(4)(A) of Revenue and Taxation Code Sections 17053.74 and 23622.7. To avoid having to repeat these code sections throughout the regulations, the introduction of Section 8450 informs the reader that the term “Subdivision” refers to the same subdivision of Revenue and Taxation Code Sections 17053.74 and 23622.7. HCD considered placing a formal definition of “Subdivision” among all the other definitions in Section 8450. However, the definitions are arranged in alphabetical order and the defined term “Subdivision” would not appear until subsection (r), after it had been repeatedly used in subsections (b) through (q). HCD felt it would be less confusing to the regulated public to, instead, put the definition of Subdivision in the introductory information.

“Applicant” – This definition is added for convenience in referring to the taxpayer with a business operating in a zone. Often businesses are headquartered outside the zone and, for the

convenience of the business, the definition makes clear that the business may be represented by its local office or business entity with hiring authority in the zone. The definition also is intended to make clear that in order to be an applicant for a voucher, the business must have a worksite in the zone in which the voucher application is filed.

“Disabled individual” (subsection (b)), “Dislocated worker” (subsections (c) – (k)), “Native American” (subsection (p)), “Recipient of public assistance” (subsection (q)), “TEA resident” (subsection (t)) – The purpose of including these definitions is to create a short hand reference for these “qualified employee” categories to avoid having to repeat the lengthy citations and narrative descriptions found in the Revenue and Taxation Code.

“Doing business in the zone” – There are numerous places in the Government Code Enterprise Zone Act, Revenue and Taxation Code Sections 17053.74 and 23622.7, and other statutes where enterprise zone businesses receive special treatment, and where phrases such as “conducting business in the zone” (Gov. C. Sec. 7089(c), or “conduct of the taxpayer’s trade or business located in an enterprise zone” (subdiv. (b)(4)(A)(i), (ii) of Rev. and Tax. Code Secs. 17053.74 and 23622.7) are used. The term “taxpayer” is defined as “a person or entity engaged in a trade or business within an enterprise zone (subdiv. (b)(5) of Rev. and Tax. Code Secs. 17053.74 and 23622.7). Nowhere do the Enterprise Zone Act or the Revenue and Taxation Code Sections 17053.74 and 23622.7 require that a business be headquartered in a zone. However, there must be some business presence in a zone to qualify for a tax credit. This definition is included to complement the definition of “worksite” to establish what that minimum business presence must be.

“Economically disadvantaged individual” – Subdivision (b)(4)(A)(iv)(III) of Revenue and Taxation Code Sections 17053.74 and 23622.7 uses the term “economically disadvantaged individual 14 of years of age or older;” but the Revenue and Taxation Code does not define “economically disadvantaged. The Department has no particular expertise in attempting to define this category. However, the California Employment Development Department (“EDD”), which administers the federal Workforce Investment Act (“WIA”), has published a Workforce Investment Act Eligibility Technical Assistance Guide Program Year 2003-2004. This Guide contains various eligibility categories, including a category for eligible youth between the ages of 14 and 21 (p. 28 of the Guide). The definition of “economically disadvantaged” proposed for these regulations is based on the EDD Guide requirements for eligible youth. The thrust of all the “qualified employee” eligibility categories in the Revenue and Taxation Code is that the employee, immediately prior to hiring, faced substantial obstacles to employment. Therefore, in the Department’s view, the EDD requirements that couple lower income (a surrogate for “economically disadvantaged”) with other obstacles to employment (i.e., deficiency in literacy skills, lacking a high school diploma, or homeless/runaway/foster child) provide a comprehensive working definition of this criterion. The operational definition of “lower income” has been borrowed from Health and Safety Code Sec. 50079.5 which defines “lower income” as 80% or below the area median income for purposes of the State’s housing programs.

“Ex-Offender” - Subdivision (b)(4)(A)(iv)(VI) of Revenue and Taxation Code Sections 17053.74 and 23622.7 confers “qualified employee” status on a person who immediately preceding the employee’s commencement of employment with the taxpayer was an “ex-

offender”. This subdivision goes on to state that an individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilt. The term “ex-offender” is not defined California statutes or case law. In the Department’s opinion, the intent of the Legislature in creating this eligibility criterion meant to target persons whose convictions represent a serious obstacle or artificial barrier to employment. After conversations with zone managers and professional employment assistance staff, it seems that a felony conviction generally represents an obstacle to employment whereas a misdemeanor does not. For this reason, the Department proposes to define “ex-offender” to mean a person convicted of a felony.

“Local Zone” and “Remote Zone” – Each enterprise zone in the state has businesses doing business in that particular zone, and those businesses employ employees in that zone, and there is a zone manager for that zone who issues vouchers for work done in that zone. So every zone is a “local zone.” However, there are several places in Article 14 where a distinction needs to be drawn between the zone in which a qualified employee is working and some other enterprise zone in the state. The purpose of creating the terms “local zone” and “remote zone” is to provide short hand terms for these concepts in those sections (e.g., where the “local zone” contracts with a “remote zone” for the remote zone to issue vouchers on behalf of the local zone). The percentage of an employee’s time spent in the local zone is based on the requirement of subdivision (b)(4)(A)(ii) of Revenue and Taxation Code Sections 17053.74 and 23622.7, which require that a qualified employee perform at least 50% of his or her services in a zone during the taxable year.

“Worksite” - As noted above under the explanation for the definition of “doing business in the zone,” it is necessary to establish the minimal presence a business must have in a zone to qualify to receive tax credits. This definition requires the business to have a fixed geographic location (e.g., a delivery service or taxi company would not qualify if it merely had trucks or taxis operating in a zone), and at least one employee performing services for the employer for at least 50% of the employee’s time. This latter requirement is necessary to implement subdivision (b)(4)(A)(ii) of Revenue and Taxation Code Sections 17053.74 and 23622.7.

§8450.1. Designation of Zone Manager and Staffing

As noted above, the current practice state wide is for vouchers to be issued by local government enterprise zone managers. Prior to Chapter 225, issuance of vouchers by local zones was not provided for in statute, nor was there any acknowledgement of enterprise zone managers, only enterprise zone governing bodies.

Subsection (a) The purpose of this subsection is to ensure that the governing body of each enterprise zone in the state formally designates a manager for its zone, and notifies the Department. Notification to the Department is necessary so that in its communications with and oversight of zones, the Department knows which entity is authorized to act on behalf of the zone. To the best of the Department’s knowledge all of the zones in the state utilize an agency or department of the local government to administer the zone. However, in the event that a zone’s governing body elected to utilize the services of a third party to oversee its zone’s operations, this subsection requires that the arrangement be formalized in writing and require compliance with Article 15. The purpose of this requirement is to ensure that a third party is fully aware of and bound by the requirements of Article 15. The MOU represents the “contract” between the

State and a zone which binds the zone to the commitments made in the zone's original application for designation, as well as any subsequent modifications (e.g., in response to an audit). Original zone designations were based, in part, on the local government's ability to administer the zone. Delegation of this responsibility to a third party would be a substantial change from the conditions underlying the original designation and need to be formalized through an amendment to the MOU.

Subsections (b), and (c) The purpose of this subsection is to ensure that a zone continues to support its zone activities, including any vouchering program, in a manner that ensures timely issuance of vouchers only for qualified employees. When each zone initially was designated, the zone promised to provide a specified level of effort in support of its zone activities. When EDD stopped issuing hiring tax credit vouchers, the ad hoc system described above evolved. One of the problems that employers and their consultants have had with this system is that, in some zones, the voucher program cannot issue vouchers in a timely manner due to understaffing. As a result, some businesses and consultants have attempted to obtain vouchers from other zones in the state. Pursuant to Government Code Section 7076.1(b), when the Department audits a zone, it is required to evaluate the vouchering plan, zone staff levels, and zone budget. Subsection (c) is included in order for the Department to receive prompt notice of a zone governing body's reduction of its support for a zone. Prompt notice will assist the Department in working with the zone to ensure that businesses and potential qualified employees in the zone do not suffer due to a lack of local government effort.

§8450.2. Administration of a Vouchering Program

This section responds directly to the Legislative mandate of Government Code Section 7086(d) by establishing the parameters of any zone vouchering program. It also responds, in part, to specific issues raised by businesses and their consultants as a result of the current ad hoc process. For various reasons, some businesses and their consultants have gone to zone managers outside of the zone in which the business is located for their vouchers. One reason for seeking these "cross jurisdictional vouchers" is that the local zone has been unwilling or unable to timely process voucher requests. These regulations will restrict this practice somewhat (see the explanation under subsection (b)). However, to help ensure that businesses will be able to obtain vouchers locally, these regulations mandate that all zones have vouchering programs that are adequately budgeted and staffed to issue vouchers.

Subsection (a): The purpose of this subsection is to ensure that all zones have vouchering programs that meet minimal standards.

- **(a)(1)** The purpose of requiring written policies and procedures is to ensure that each zone is consistent, over time, in its administration of the program.
- **(a)(2)** The primary purpose of a vouchering program is to ensure that vouchers are issued only for qualified employees. Each plan needs to make this explicit.
- **(a)(3)** The requirement for recordkeeping is to permit the Department to audit local programs to ensure that they are following the requirements of law and regulation in the issuance of vouchers. The reason for the five-year retention requirement is to assist the Department to implement and comply with the requirement that the Department submit a

report on the effectiveness of enterprise zones to the Legislature every five years (Gov. Code Sec. 7085(a)).

- **(a)(4)** It is expected that most zones will utilize local government employees to administer their voucher program, and local government employees are governed by the Political Reform Act, and it is expected that most local government agencies have their own conflict of interest codes. However, in order to ensure that the voucher issuing process is fair, uniform and untainted, these regulations require the local voucher program to have its own conflict of interest provisions.
- **(a)(5)** Merely by having a written vouchering plan, a zone will be more likely to be consistent in its administration of vouchering policies. However, the Department wants to emphasize the importance of this aspect by making it an explicit requirement.
- **(a)(6)** Businesses in zones are continuously making hiring decisions which, hopefully are based in part on the potential for receiving a hiring tax credit. It is important that the businesses have timely information regarding the procedures for obtaining the credits. This regulation requires that zones keep businesses notified of any changes in policies or procedures. Also, Government Code Section 7076(a) requires the zone to make businesses aware of opportunities to participate in the program.
- **(a)(7)** One purpose of the enterprise zone program is the stimulation of business and industrial growth in depressed areas of the state (Gov. Code Sec. 7071(a). However, the hiring tax credit only is available for the hiring of a person facing barriers to employment (i.e., a “qualified employee”). A core function of any enterprise zone is assisting businesses to find and hire qualified employees. Therefore this function needs to be included in any vouchering plan.
- **(a)(8)** Not all zones have the staffing necessary to operate a successful vouchering program. Therefore, the proposed regulations would permit the use of a third party to issue vouchers. However, to ensure that a zone retains control over its vouchering process the proposed regulation requires that the vouchering plan provide for use of a third party vouchering agent and that there be a written agreement with the vouchering agent.

Subsection (b): Subdivision (c)(1) of Revenue and Taxation Code Sections 17053.74 and 23622.7 states that a taxpayer shall obtain from “the Employment Development Department, . . . or the local government administering the enterprise zone, a certification that provides that a qualified employee meets the eligibility requirements . . . (emphasis added).” In the Department’s opinion, since the Legislature did not use the phrase “a local government administering an enterprise zone,” this language unambiguously requires a taxpayer to obtain a voucher from the zone in which the hiring business is located (the “local zone”), rather than some other enterprise zone (the “remote zone”). However, there are circumstances where the local zone may not have the monetary resources or staff capacity to timely issue vouchers. In this case, it would be unfair to taxpayers to endure lengthy delays in issuance of vouchers. On the other hand, zone managers have complained that issuance of vouchers by remote zones impedes their ability to administer their local zones. To address these issues, the regulations propose to permit a local zone to, in effect, delegate its vouchering functions to a remote zone. This allows the local zone to control whether or not a remote zone issues certificates for businesses located in the local zone. This will ensure that the administrator of the local zone is fully aware of what is going on in its zone. It also will help ensure that taxpayers’ receipt of

certificates will not be delayed due to lack of resources in the local zone. To ensure that a formal relationship is created, rather than merely an oral understanding, the regulations propose to require a written agreement between zones memorializing the delegation of vouchering responsibility. However, the local zone will remain fully responsible. Moreover, since the original zone designation was based on the local zone's capability and capacity to administer a zone program, it is important for the Department to be notified of a decision by the local zone to delegate out part of its functions.

Subsections (c), (d), and (e): The applicant for designation of an enterprise zone is the governing body over the geographic area of the zone. This governing body is responsible for compliance with the requirements of the Enterprise Zone Act. In order to facilitate administration of the zone and issuance of vouchers, the proposed regulations permit the governing body to delegate administrative functions to a zone manager which may be, but is not required to be, a department or division of the local government. The zone also may delegate vouchering functions to a remote zone.

The purpose of subsection (c) is to make clear to each governing body that it remains fully responsible for compliance with the vouchering requirements of Article 14 despite any designation of a zone manager or delegation of vouchering functions to a remote zone. Subsection (d) makes clear to the local zone manager that it cannot avoid responsibility for vouchering functions in the event that those functions are delegated to a remote zone.

Finally, the principal means of enforcing the Act and regulations is through the Department's audit of enterprise zones. Subsection (e) makes clear to governing bodies and zone managers that the vouchering function will be audited, and in the case of delegated vouchering functions, the results of the audit will be applied to both the local zone and the remote zone administering the vouchering functions. The Department believes that this is a fair and constructive provision. In the event that a remote zone is out of compliance with the requirements of Article 14, it should be held accountable on its own account. And the delegating local zone should be held accountable because it is ultimately responsible for voucher issuance in its own zone and should keep a close watch on the activities of the remote zone issuance of vouchers on the local zone's behalf.

§8450.3. Content of a Voucher.

For consistency among zones, and for ease of monitoring by the Franchise Tax Board and the Department, this section prescribes the content of vouchers, including the application portion of the voucher. The "voucher" consists of two parts – the application filed by the applicant and the decision made by the zone manager or vouchering agent. For consistency, the Department proposes to retain authority to prescribe the format of the voucher.

Subsection (b) --Voucher Application Content:

- **(b)(1)** The name, address and telephone number of the employee is necessary in order for the vouchering agent and Franchise Tax Board to verify that the employee resides in a Targeted Employment Area, and in order to contact the employee if questions arise with regard to documentation. Date of hire is required to ensure that the employee was hired

after the zone was designated as required by subdivision (b)(4)(A)(III) of Revenue and Taxation Code Sections 17053.74 and 23622.7. Date of termination is necessary for the Franchise Tax Board to calculate the tax credit. This information also assists the Department in its cost benefit analysis of the program.

- **(b)(1)** Starting salary information and whether the hire is to refill an existing position or a new position is necessary to respond to the statutory requirement of Government Code Section 7085 that the Department periodically report to the Legislature on, among other things, the effect of the program on employment and incomes. The Department has found that the Legislature is particularly interested in knowing whether the persons for whom tax credits are generated are in minimum wage jobs, or whether the tax credits are supporting high-salaried employees. The Legislature also is interested in knowing about job creation and job retention.
- **(b)(1)** Social security numbers are necessary to ensure that the various documents provided to establish that the employee is “qualified” all pertain to the same person and not another person with the same or similar name. For the most part, government-provided documents use both a name and a social security number for identification.
- **(b)(2)** Employer information is necessary to fulfill the reporting requirements of Government Code Section 7085 and in order to be able to contact the employer in the event there are questions regarding documentation or other issues concerned with the application for a tax credit.
- **(b)(3)** Requiring the applicant to self designate the eligibility category being applied under will assist the zone manager in its review of the application. The primary focus of the application is providing the necessary information and documentation to support the qualified employee category.
- **(b)(4)** Requiring the applicant to state whether it is providing specified documentation or alternate documentation will assist the zone manager in its review of the application.
- **(b)(5)** This paragraph is necessary to ensure that every voucher application includes the basic employee eligibility information.
- **(b)(6)** Subdivision (b)(4)(B) of Revenue and Taxation Code Sections 17053.74 and 23622.7 require employers to give hiring priority to specified applicants. To implement this requirement, the application requires a statement from the applicant that it has attempted to provide this preference in hiring.
- **(b)(7)** These regulations require that an applicant for a tax credit have a “worksite” in the zone in order to be considered to be “doing business” in the zone. The voucher application therefore must gather information on the applicant’s business connection with the zone.
- **(b)(8)** The percentage of time employed in the zone and the nature of employment outside the zone is needed to satisfy the requirements subdivision (b)(4)(A)(i) and (ii) of Revenue and Taxation Code Sections 17053.74 and 23622.7 which require that an employee work at least 50% of the time in the zone and 90% of the time on work directly related to the business in the zone.
- **(b)(9)** This paragraph is necessary to permit the Department to conveniently collect the information necessary to prepare its periodic reports to the Legislature required by Government Code Section 7085. Because the Department is just learning this program, it is difficult to anticipate all information that may be necessary to collect in the voucher

application. This paragraph gives the Department some flexibility to request other information necessary to assess the cost effectiveness and efficiency of the program.

- **(b)(10)** To assure some accountability and verifiability, the application requires the applicant to certify under penalty of perjury that the documents submitted with the application are copies of actual documents in the employer's possession.

Subsection (c) - Zone Manager Information: The zone manager identification and verification information and the eligibility criteria providing the basis for the vouching decision are necessary to: provide the basic information to support the issuance or denial of the voucher; provide information to the applicant for an appeal in the event of a denial; and to assist the Department and the Franchise Tax Board ascertain compliance with the requirements of the program.

§8450.4. Required Documentation For Issuance of a Voucher.

The purpose of this section is to make clear to any applicant for a voucher, and to emphasize to any applicant, that there are four basic requirements: (1) the business requesting the voucher must be doing business in the zone (as required by subdivision (b)(4)(A)(i) and (ii) of Revenue and Taxation Code Sections 17053.74 and 23622.7); (2) the employee must have worked in the zone at least 50% of his or her time in the zone (as required by subdivision (b)(4)(A)(ii) of Revenue and Taxation Code Sections 17053.74 and 23622.7); (3) the voucher application must be complete; and (4) the business must provide documentation that the employee is a "qualified employee" pursuant to the requirements of Section 8450.5 or Section 8450.6.

§8450.5. Acceptable Documentation.

As a general proposition, it is the Department's intent to make it as easy as possible for a business applying for a voucher to produce the documentation required to establish that an "eligible employee" has been hired, consistent with the express requirements of statute. On the other hand, zone managers, for ease of administration, would prefer a list of objectively verifiable documentation of eligibility. In recognition of the fact that the Department cannot ever develop an exhaustive list of the specific documents that establish a "qualified employee" in all cases, the Department proposes to adopt two methods a tax payer may utilize to qualify for a voucher. Section 8450.5 provides a list of documents that, if produced, will be sufficient to verify eligibility of an employee as a "qualified employee." However, in the event that this documentation is unavailable, Section 8450.6 gives tax payers the flexibility to propose alternate means of documentation; and provides zone managers the discretion to determine if that documentation is sufficient to establish eligibility.

Subsection (a): This subsection merely alerts tax payers and zone managers that a prerequisite to issuance of a voucher is compliance with the documentation requirements of Section 8450.54 unless these requirements cannot be met, in which case, an applicant may apply under Section 8450.6.

Subsection (b): Subdivision (b)(4)(A)(iv)(I) of Revenue and Taxation Code Sections 17053.74 and 23622.7 creates a "qualified employee" eligibility category for persons who,

immediately before commencement of employment with the taxpayer, was eligible for services under the federal Job Training Partnership Act (JTPA”), “or its successor,” who is receiving, or is eligible to receive, subsidized employment, training, or services funded by JTPA, “or its successor.” In brief, the JTPA was designed to improve the employment status of disadvantaged young adults, dislocated workers, and individuals facing barriers to employment.

The JTPA has been replaced by the Workforce Investment Act of 1998 (Public Law 105-220) (“WIA”).³ In part, WIA is intended to induce creation of a “one-stop” delivery system with career centers in neighborhoods where customers can access core employment services and be referred directly to job training, education, and other services. One-stop centers use varied strategies in providing appropriate services to meet the needs of customers. “Core services” are available to all adults age 18 years of age or older. These core services include job search and placement assistance, labor market information, initial assessment of skills and needs and follow up services to help customers keep their jobs once placed.

However, one-stop centers also offer “Intensive Services” available to adults and dislocated workers, respectively, who:

- Are unemployed and are unable to obtain employment through core services; and
- Have been determined by a one-stop operator to be in need of more intensive services in order to obtain employment; or
- Are employed, but who are determined by a one-stop operator to be in need of such intensive services in order to obtain or retain employment that allows for self-sufficiency. (Workforce Investment Act of 1998, Sec. 134(d)(3)(A))

Although WIA is a successor program to JTPA, eligibility for services under WIA is broader than eligibility under JTPA. Specifically, core services under WIA are available to all adults and youth over the age of 14. In contrast, eligibility for JTPA services was limited to: disadvantaged young adults, dislocated workers, and individuals facing barriers to employment. In the Department’s opinion, the Legislature clearly intended businesses in enterprise zones to hire persons with particular characteristics, as evidenced by the long list of eligibility criteria in subdivision (b)(4)(A)(iv) of Revenue and Taxation Code Sections 17053.74 and 23622.7. The Legislature did intend to confer a tax credit on a zone business for every employee hired. For this reason, the Department is proposing that only the Intensive Services component of WIA be considered the successor program to JTPA.

Subdivision (b)(4)(A)(iv)(II) of Revenue and Taxation Code Sections 17053.74 and 23622.7 creates a “qualified employee” eligibility category for persons who, immediately before commencement of employment with the taxpayer, was eligible to a voluntary or mandatory registrant under the “Greater Avenues for Independence Act of 1985 (GAIN),” “or its successor.” GAIN has been superseded by the welfare-to-work activities of the CalWORKS program. See Welfare and Institutions Code Sec. 11320. Proposed regulations section 8450.5(b) alerts the regulated public that this change has occurred.

³ State of California, Employment Development Department (“EDD”), “WIA Overview”, <http://www.edd.ca.gov/wiarep/wiaind.htm> The information in the balance of this discussion is available at this EDD website, or at <http://www.edd.ca.gov/wiarep/wiainfo.htm> where eligibility for services is discussed.

Since JTPA, GAIN and WIA are government-administered programs, only the JTPA or Gain administrator, or the entity providing the WIA Intensive Services is qualified to determine whether an individual is eligible to receive services or is enrolled in the program. JTPA and GAIN are included here because some employers are still submitting requests for vouchers for employees hired during the time these programs were active. Also, subdivision (b)(4)(A)(iv)(XI) of Revenue and Taxation Code Sections 17053.74 and 23622.7 confers “qualified employee” status on a person who immediately preceding the employee’s commencement of employment with the taxpayer was a member of a targeted group as defined in Section 51(d) of the Internal Revenue Code (the Work Opportunity Tax Credit program, or “WOTC”). Pursuant to the Internal Revenue Code a taxpayer cannot claim the WOTC tax credit unless the employee has received a certificate from a “designated local agency” (see Internal Revenue Code Sec. 51(d)(16)(A). The term “designated local agency” is defined in Internal Revenue Code Section 51(d)(15).

Subsections (c) – (p):

There are two bases for the list of documents that occur in each of these subsections:

- (1) First, the enterprise zone program has been in existence and operating for almost 20 years; and zone managers have been issuing vouchers since the summer of 1997 (from the time the California Employment Development Department [“EDD”] stopped issuing vouchers). So zone taxpayers, employees and zone managers have had a wealth of experience in attempting to document the various statutory eligibility criteria for “qualified employees.”
- (2) Second, many of the California Enterprise Zone Program “qualified employee” eligibility criteria are the same as, or similar to, the eligibility criteria for receipt of Intensive Services offered through the federal Work Force Investment Act of 1998 (“WIA”). WIA is administered by EDD; and has published a Workforce Investment Act Eligibility Technical Assistance Guide Program Year 2003-2004 (the “EDD Technical Assistance Guide”) which contains a comprehensive list of acceptable documentation for WIA purposes
(see <http://www.edd.ca.gov/wiarep/rwiad03-5.pdf> - pages 41-49).

For ease of reference in the following discussion for subsections (c) through (p), the justification for each of the required pieces of documentation or information is either: past practice (“PP”), as described in (1) above, or the EDD TA Guide (“EDTA”) as described in (2) above.

Subsection (c): (economically disadvantaged individual over 14 years of age)
PP and EDTA.

Subsection (d) (dislocated worker due to layoff)

- (d)(1)(A) – PP
- (d)(1)(B), (C) – PP and EDTA
- (d)(1)(D) – EDTA

- (d)(1)(E) - PP
- (d)(2)(A), (B) – EDTA
- (d)(3)(A), (B),(C) – EDTA

Subsection (e) (dislocated worker due to plant closure)

- (e)(1)(A) – PP
- (e)(1)(B), (C) – PP and EDTA
- (e)(1)(D) – EDTA
- (f)(1)(E) – PP
- (e)(2)(A), (B), (C) – PP and EDTA
- (e)(2)(D) – EDTA

Subsection (f) (dislocated worker due to long-term unemployment)

The statute uses the phrase “long-term and has limited opportunities for employment” The reason the required documentation must be dated no sooner than 26 weeks prior to hire is to coincide with the 26-week period a person may draw unemployment. In the Department’s opinion, a person who has exhausted his or her unemployment benefits and been unable to find a job likely would have limited opportunities for employment.

- (f)(1) **[need justification for 15 of 26 weeks]**
- (f)(2)-(g)(5) – PP

Subsection (g) (dislocated worker due to loss of self-employment)
PP and EDTA

Subsections (h) – (k) (dislocation due to base closure, prior active duty military, migrant worker, Clean Air Act) – PP

Subsection (l) (disability)
PP and EDTA

Subsection (m): (ex-offender)

- (m)(1) – PP and EDTA
- (m)(2), (3) – PP
- (m)(4) – PP and EDTA
- (m)(5) -- consultants for businesses have requested this change. In the Department’s opinion, this is similar to a “declaration against self interest” and wouldn’t be made by a prospective employee unless true. For this reason, the Department proposes to accept an employment application that affirmatively asserts that the applicant has been convicted of a felony.

Subsection (n) (eligibility for public subsidies)

- (n)(1) – (3) – PP and EDTA
- (n)(4) – PP
- (n)(5) – PP and EDTA

- (n)(6) – PP
- (n)(7), (8), – EDTA
- (n)(9) – consultants for businesses have requested this change. In the Department’s opinion, this is similar to a “declaration against self interest” and wouldn’t be made by a prospective employee unless true. For this reason, the Department proposes to accept an employment application that affirmatively asserts that the applicant is receiving a public subsidy.

Subsection (o) (Native Americans) – PP

Subsection (p) (TEA resident) – PP. The statutes require that the employee have been a resident of a Targeted Employment Area “immediately preceding the qualified employee’s commencement of employment” (subdiv. (b)(4)(A)(iv)(IX) of Rev. and Tax. Code Sections 17053.74 and 23622.7). In conversations with zone managers, the Department has been advised that some employers have submitted voucher applications for employees who appear to have used a friend’s or relative’s address in a TEA to qualify the employer for the tax credit. The reason that the Department is requiring that the documentation be dated 90 days prior to the time of hire is to demonstrate that the employee truly was a resident of the TEA and not just “borrowing” an address from a friend or relative.

§8450.6. Alternate Method of Establishing Eligibility for Issuance of a Voucher.

Section 8450.5 is intended to, in effect, create a “safe harbor” for zone managers and businesses for purposes of dealing with the Franchise Tax Board. However, the Department recognizes that it is impossible to create a complete, definitive list of all the myriad ways a business may demonstrate that an employee is “qualified.” For this reason, the Department is proposing Section 8450.6 to give businesses and zone managers flexibility to entertain alternate forms of documentation. To add to the weight and veracity of this information: subsection (a) requires that the documentation must have been in existence on or before the employee’s date of hire; and subsection (b) requires a statement by the employee, under penalty of perjury, that the documentation is true and correct.

§8450.7 Voucher Appeals:

Taxpayer-business representatives historically have complained that zones apply inconsistent standards in the issuance or denial of vouchers. Representatives also have complained that some zones are inordinately slow in issuing vouchers. The Department thinks that these regulations will go far in addressing these problems. However, in conversations with representatives it is clear that, even with these reforms, they will want an avenue of appeal to the Department. From the Department’s perspective, there is a concern about the potential workload that could be generated by a large volume of appeals. Moreover the intent in designating a zone and approving a local zone vouchering program is to make the local zone responsible for its own administration and a desire to permit local control. Nonetheless, the Department agrees with taxpayer-business representatives that some form of an appeal process is both fair and necessary.

Subsection (a) establishes the minimum information necessary to file an appeal both to the local zone manager and the Department. Alerting potential appellants to these requirements early hopefully will avoid misunderstandings and delay when an appeal is filed.

Subsection (b) is primarily procedural. It makes clear that if a zone utilizes another zone or a vouchering agent to issue its vouchers, the applicant may appeal a decision of the remote zone or vouchering agent to the zone where the business is located. The 30-day periods are based on the Department's experience with existing zone practices and seem to be reasonable for the taxpayer and achievable by the zone managers. Requiring copies to be sent to the Department will assist the Department in monitoring problems that may arise under these proposed regulations.

Subsection (c) permits the Department to review local zone manager denials. This will provide a neutral forum outside the zone and an opportunity to provide a state-wide perspective. During its consideration of appeals, it is likely that the Department will consult with other state agencies, particularly the Franchise Tax Board, as to the merit of the appeal. The purpose of the 30-day period is to keep the process moving and to give the applicant appellant a reasonable time to prepare the materials for submission to the Department.

The purpose of subsection (d) also is to keep the process moving along, but also provides for finality if the Department doesn't act within the 90 days.